

Lennox Industries, Inc., Midwest Division, Petitioner and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Amalgamated Local 893, Unit 11, AFL-CIO. Case 18-UC-260

September 30, 1992

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On April 2, 1992, the Regional Director for Region 18 issued the attached Decision and Order in which he dismissed the instant unit clarification petition, which sought to separate the existing combined single unit of production and maintenance employees employed at the Employer-Petitioner's Marshalltown, Iowa manufacturing facility and at six sales and distribution facilities (warehouses)¹ represented by the Union, into seven separate units. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer-Petitioner filed a timely request for review of the Regional Director's decision, asserting that the Regional Director erred by failing to clarify the unit into seven separate units, one at each geographic location, and by failing to apply the principles set forth in *Rock-Tenn Co.*, 274 NLRB 772, 773 (1985), and *Ameron, Inc.*, 288 NLRB 747 (1988).

By Order dated June 19, 1992, the Board granted the Employer-Petitioner's request for review² and issued a Notice to Show Cause why the existing unit should not be clarified into two separate units: (1) a unit of all production and maintenance employees at the Marshalltown manufacturing facility; and (2) a unit of all employees at the six sales and distribution facilities included in the existing unit.³

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the parties' response to the Notice to Show Cause, and has decided to reinstate the petition and to clarify the existing unit into two separate units as proposed in the Notice to Show Cause.

The facts are not in dispute. As the Regional Director found, Lennox Industries manufactures heating and air-conditioning products at various facilities, then

transfers these products to sales and distribution facilities located throughout the country, from which independent dealers are supplied inventory and sales are serviced. Prior to a corporatwide reorganization in 1991, Lennox Industries was divided administratively into five geographic divisions. The Midwest, Southwest, and Eastern divisions had both manufacturing and sales and distribution components, while the Southeast and Western divisions were composed solely of sales and distribution facilities.

In December 1976, in Case 18-RC-11135, the Union was certified to represent a single unit of Midwest division employees, consisting of approximately 400 employees at the Marshalltown manufacturing facility and approximately 16 employees at the six warehouses in the Midwest division. The Employer-Petitioner and the Union have been parties to successive collective-bargaining agreements covering this unit since 1977, the most recent of which was effective from October 2, 1989, until October 2, 1992. Local management in Marshalltown negotiated and administered these contracts, and all administrative, personnel, and labor-relations functions were handled in Marshalltown without assistance or input from Lennox Industries' corporate headquarters in Dallas, Texas.

The Regional Director found that the employees of the Midwest division shared a community of interest based on, inter alia, the Employer-Petitioner's geographic organization; the integration of the manufacturing, sales, and distribution operations in the Midwest division; the interchange of employees among Midwest division facilities, based in part on contractual unitwide seniority-based bumping rights in the event of a lay-off;⁴ and common skills and functions between the warehouse employees and a small number of manufacturing employees who drive forklifts, load and unload trucks, and move products.

In the spring of 1991, Lennox Industries began phasing in Project 21, a reorganization plan which resulted in the relocation to and centralization of all sales and distribution functions at corporate headquarters. In addition, the manufacturing facility in the Southwest division was closed. All division management positions relating to sales and distribution were eliminated, and factory managers became "site managers," with responsibility solely for manufacturing at the remaining manufacturing facilities, including Marshalltown.

By November 1, 1991, the Midwest division had become the "Marshalltown manufacturing facility." On November 7, the Marshalltown site manager notified union officials of the changes in organizational structure, advising them that all problems and/or grievances associated with the individual warehouse operations

¹ The warehouses are located in St. Louis, Missouri; Bloomington, Minnesota; Davenport, Iowa; Lenexa, Kansas; Denver, Colorado; and Pewaukee, Wisconsin.

² Member Devaney dissented as he would have denied the request for review.

³ Although not noted in the Regional Director's decision, at the hearing the Employer-Petitioner indicated that it would "go along" with whatever unit the Board deemed appropriate, including the two units set forth in the Notice to Show Cause.

⁴ There have been five or six transfers from the manufacturing facility to the warehouses pursuant to this provision.

should be addressed directly to the distribution manager at each warehouse.

The Regional Director found that although the community of interest shared by unit employees was lessened by the Employer-Petitioner's transfer of managerial authority over the sales and distribution functions from Marshalltown to Dallas, that community of interest was not negated entirely. The Regional Director further found that the shift of higher authority from Marshalltown to Dallas was likely to have little impact on unit employees, because of the significant day-to-day autonomy possessed by the warehouse managers. Accordingly, he concluded that the organizational changes were not of a nature to override the parties' long history of bargaining in the combined unit, and dismissed the petition on the ground that the geographic relationship between these facilities continued to support the combined unit, even though the Employer-Petitioner's corporate organization was no longer coextensive with the bargaining unit. The Regional Director reasoned that the Marshalltown manufacturing facility and the six warehouses remain parts of the same corporation, and are ultimately responsible to the same corporate management, unlike the situation in *Rock-Tenn* and *Ameron*, where reorganization divided the bargaining units at the highest corporate level.

We disagree with the Regional Director, and find merit to the Employer-Petitioner's argument that its recent corporate reorganization has rendered the existing single unit inappropriate. However, our review of the record and the responses to our Notice to Show Cause have convinced us that it would be appropriate to clarify the existing unit into two separate units, rather than the seven separate units originally sought in the petition.

As set forth in *Rock-Tenn* and its progeny,⁵ while the Board places great weight on collective-bargaining history, it will clarify an historical unit where recent, significant changes have rendered that unit inappropriate. Thus, in *Rock-Tenn*, the Board clarified the combined single unit into a two-plant unit, where it found that changes in the organizational structure and operations of the employer's papermill and partition plant had occurred when they were sold to separate operating divisions of the Rock-Tenn Company. At the time of the sales, there were few remaining factors of commonality between the two plants, whose employees had been represented in the single unit for approximately 14 years. Each plant was engaged in a totally different operation, had separate and distinct corporate management and supervisory staff, labor relations had been completely decentralized, and grievances were handled separately, negating any community of interest

that may have existed previously among employees of the two plants.

Similarly, in *Ameron*, the Board clarified the existing combined single unit into two separate units, because it found that restructuring and recapitalization had resulted in the creation of a separate company (TAMCO) to operate the melt shop and rolling mill whose employees historically had been represented in a single unit combined with Ameron's wire mill employees. The Board found that each of these corporate entities had its own managers and employees, different operations requiring different equipment and skills, separate personnel departments, and separate handling of labor relations, all of which rendered the combined single unit inappropriate.

In the instant case, likewise, we find that the recent, substantial changes that occurred as a result of the corporatewide reorganization have divided the manufacturing operations from the sales and distribution operations as effectively as the sale of the plants in *Rock-Tenn* and the creation of TAMCO in *Ameron* created essentially independent entities, functioning separately and autonomously.

As the Regional Director found, in the instant case the history of bargaining in a single unit began at a time when the responsibility for both manufacturing operations and sales and distribution operations rested with the Midwest division vice president, who was headquartered in Marshalltown and reported directly to the corporate chief executive/chief operating officer in Dallas. Reporting to the Midwest division vice president were the Marshalltown factory manager and a variety of managers for sales and marketing. Although the warehouse managers at the six remote facilities handled day-to-day affairs, sales and distribution management in Marshalltown were involved in personnel and labor-relations decisions, and all steps in the formal grievance procedure after preliminary discussions between the affected employee and his immediate supervisor. Thus, it is clear that while the employees in the combined unit shared some community of interest prior to the 1991 reorganization, it was not substantial; and that, as a result of the reorganization, the administrative and managerial ties between the warehouses and the Marshalltown manufacturing facility were eliminated. Thus, the only remaining shared community of interest between employees at the warehouses and at Marshalltown are the common terms and conditions of employment set forth in the collective-bargaining agreement, and the common overall control at the highest corporate level in Dallas.

Unlike the situation in *Stafford-Lowdon Co.*,⁶ relied on by the Regional Director, in which the only change that affected employees in the two-plant unit was the appointment of a separate manager for each plant, in

⁵ See *Batesville Casket Co.*, 283 NLRB 795 (1987); *Delta Mills*, 287 NLRB 367 (1987); *Ameron*, supra.

⁶ 253 NLRB 270 (1980).

the instant case one entire line of management and supervision was removed and relocated. Personnel and labor relations are no longer handled in common, payroll is separate, and health and pension plan administration has been separated. Moreover, while all employees in the contractual unit are performing the same jobs in the same locations as they did prior to the reorganization, and while the six warehouses formerly part of the Midwest division continue to distribute products manufactured at Marshalltown, as well as products manufactured at other locations, a separate unit of employees at the Marshalltown manufacturing facility is now appropriate based on its substantial day-to-day autonomy of operations and supervision, and virtually complete separation from the six warehouses. See *Fruehauf Trailer Co.*, 87 NLRB 589, 591 (1949).

We agree with Regional Director, however, that separate units at each of the six warehouses are not appropriate. As he found, at least three of the six have only one or two employees and, while there no longer is any administrative reason for grouping these geographically distant facilities together, the employees at these locations have a long bargaining history of being represented together as part of a larger unit. In these circumstances, we find that it would best effectuate the purposes of the Act to allow them to continue to be represented by the Union in the same geographical grouping in which they previously were represented, retaining their group identity within the Employer-Petitioner's reorganized sales and distribution operations, unless and until the parties themselves may negotiate a different configuration.

ORDER

The Regional Director's Decision and Order dismissing the instant unit clarification petition is reversed, the petition is reinstated, and the existing unit is clarified into two separate units, one consisting of employees at the Marshalltown manufacturing facility, and one consisting of employees at the six sales and distribution facilities.

MEMBER DEVANEY, dissenting.

I would have denied the Employer-Petitioner's request for review, as I agree with the Regional Director's determination that the recent organizational changes cited by the Employer-Petitioner do not warrant clarification of the historical unit. As more fully discussed by the Regional Director, these changes were not so substantial as to negate the existing community of interest among the unit employees and render the longstanding unit no longer appropriate.

APPENDIX

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this case, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹

3. The Petitioner, contrary to the Union, seeks to clarify an existing bargaining unit of production and maintenance employees employed at a single manufacturing facility in Marshalltown, Iowa, and at sales and distribution facilities (warehouses) located in St. Louis, Missouri; Bloomington, Minnesota; Davenport, Iowa; Lenexa, Kansas; Denver, Colorado; and Pewaukee, Wisconsin, into seven separate units, one at each of the geographic locations listed in the existing unit description. The Employer contends that it undertook a recent and substantial corporate reorganization that renders the existing unit inappropriate. For the following reasons, I conclude that the organizational changes are not of a nature to override the parties' long history of bargaining in the combined unit.

Before the reorganization, the Employer organized itself into five geographic divisions. The Midwest Division was coextensive with the bargaining unit. The Union and a predecessor have represented employees in the bargaining unit for many years. There are about 400 employees at the Marshalltown facility, and 16 employees at the six warehouses combined.

The Petitioner's other divisions included the Southwest and Eastern Divisions, which had both sales and distribution facilities and a manufacturing facility like the Midwest Division, and the Western and Southeast Divisions, which included only sales and distribution facilities. In the Southwest and Eastern Divisions, production and maintenance employees at the manufacturing facilities only were represented by other unions. One sales and distribution facility in the Southeast Division was also represented by another union.

The Petitioner manufactures heating and air conditioning equipment at its manufacturing facilities. This equipment is then transferred to the sales and distribution facilities

¹ The Employer, Lennox Industries, Inc., Midwest Division, is an Iowa corporation with its headquarters in Dallas, Texas, and a manufacturing facility located in Marshalltown, Iowa, where it is engaged in the manufacture and distribution of heating and air conditioning products. During the past 12 months, a representative period, the Employer purchased and received goods and products valued in excess of \$50,000 directly from suppliers located outside the State of Iowa. During the same period, the Employer sold and shipped goods and products valued in excess of \$50,000 directly to customers located outside the State of Iowa.

throughout the country. Each sales and distribution facility supplies inventory and services sales to independent dealers in the area surrounding the facility.

Employees at the sales and distribution facilities do typical warehouse work, driving forklifts, loading and unloading trucks, and moving products about the facility. The Marshalltown manufacturing facility includes a small warehouse where one employee does work identical to that performed in the sales and distribution facilities. Twenty or so other employees in Marshalltown possess similar skills and perform similar tasks, such as driving forklifts and moving products about.

For many years, all employees in the former Midwest Division have been covered by the same collective-bargaining agreements and work rules. The current collective bargaining agreement, which has a term of October 2, 1989 to October 2, 1992, provides for unit-wide seniority-based bumping rights in the event of a layoff. Several employees have moved from Marshalltown to one of the sales and distribution facilities under that provision, including one just after the effective date of the Petitioner's reorganization. In addition, all employees in the unit share a credit union.

Before the reorganization, each division was headed by a vice president who was just below the corporate chief executive/chief operating officer level. The Midwest Division vice president was headquartered in Marshalltown. The next higher level of management was headquartered in Dallas, and rarely visited the remote facilities. Marshalltown officials were basically responsible for all production and supply decisions, hiring, contract negotiations, payroll, bill paying, and similar functions for the entire division, including the sales and distribution facilities. Day-to-day affairs, such as discipline, at the sales and distribution facilities were up to the warehouse manager, with input at the option of the warehouse manager from officials in Marshalltown.² In the event of an employee grievance, after a preliminary discussion between the affected employee and his immediate supervisor, all formal steps of the collective-bargaining agreement's grievance procedure were handled in Marshalltown, in early stages by telephone, and, if necessary later on, by taking the affected employee to Marshalltown.

After the reorganization, all of the Petitioner's sales and distribution facilities were separated from the manufacturing side of the business. All sales and distribution facilities are now supervised by sales managers headquartered in Dallas. All sales management positions in Marshalltown were eliminated. Management in Marshalltown lost its responsibility for bargaining with the Union or handling grievances concerning events or employees at the sales and distribution facilities.

After the reorganization, the warehouse managers are considered responsible for hiring, after management in Dallas authorizes filling a position. The warehouse managers are also considered responsible for discipline, with participation by Dallas officials in the early stages expected to be rare. The Petitioner expects to handle formal grievances under the collective-bargaining agreement after the contract's first step in Dallas. It appears, however, that few grievances ever

reached Marshalltown from the remote sales and distribution facilities before the reorganization, and few are likely to reach Dallas after the reorganization.

Unit clarification to divide an existing bargaining unit may be appropriate when "significant changes in the organizational structure and operations of [the existing unit] have occurred which negate any community of interests that may have existed previously among the employees" of the proposed separate units. *Rock-Tenn Co.*, 274 NLRB 772, 773 (1985). Before the Petitioner's reorganization, the employees of the Midwest Division shared a community of interest based on, among other things, Petitioner's geographic organization, integration of operations between the manufacturing facility and the sales and distribution facilities, interchange of employees, common skills and functions between the sales and distribution center employees and at least some of the employees in Marshalltown, and shared terms and conditions of employment. After the reorganization, this community of interest was lessened by Petitioner's transfer of supervisory authority over the sales and distribution facility from Marshalltown to Dallas. I find that insufficient to negate the community of interest that existed previously. Due to the significant autonomy possessed by the sales and distribution facility managers to deal with the day-to-day employment concerns of the warehouse employees, the shift of higher authority from Marshalltown to Dallas is likely to have little impact on the unit employees. The employees throughout the unit retained common terms and conditions of employment and interchange continues.

The Employer seeks to minimize the effects of integration and interchange. Although the unit sales and distribution facilities distribute products manufactured at locations other than Marshalltown, that was true to the same extent before the reorganization, and the transportation of products between Marshalltown and the unit sales and distribution facilities still takes place, and does so to no less extent. While the number of transferring employees is a small percentage of the number of manufacturing employees, it makes up a significant percentage of sales and distribution facility employees.

In addition, the Davenport sales and distribution center has only one unit employee, and the Denver and Pewaukee centers currently have only two. Thus, six separate units of the sales and distribution centers would be clearly inappropriate. The geographic relationship between the manufacturing facility and the sales and distribution facilities, essentially forming a wheel hubbed in Marshalltown, continues to support the combined unit, even though Petitioner's corporate organization is no longer coextensive.

The Employer cites a number of cases in support of its position, including *Roc-Tenn* and *Ameron, Inc.*, 288 NLRB 747 (1988), but I consider them distinguishable. In both *Rock-Tenn* and *Ameron*, the reorganization divided the bargaining units at the highest corporate level. In this case, on the other hand, the manufacturing facility in Marshalltown and the unit sales and distribution facilities are still parts of the same corporation, and ultimately responsible to the same management in Dallas. See *Stafford-Lowdon Co.*, 253 NLRB 270 (1980) (two-plant unit not inappropriate because employer recently assigned plants separate managers). In addition, none of the cited cases exhibited the extent of integration and interchange

²Manager of Human Resources Douglas Bruster testified that disciplinary decisions "[u]ltimately . . . rested in the hands of that Warehouse manager, but with strong direction from myself." Upon a leading question, he added, "[b]asically they followed our orders."

present on this record. I, accordingly, will dismiss the Petitioner's petition for unit clarification.

ORDER

IT IS HEREBY ORDERED that the petition in this case be, and it hereby is, dismissed.